



## KENTUCKY REGISTRY OF ELECTION FINANCE

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### ADVISORY OPINION 2008-001

**Any advisory opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121.135(4).**

May 20, 2008

Mr. Ralph W. Holmen  
Associate General Counsel  
National Association of Realtors  
430 N. Michigan Ave.  
Chicago, IL 60611-4087  
Facsimile # 312-329-8256

Dear Mr. Holmen:

By letter dated April 23, 2008, you requested an Advisory Opinion regarding the following facts:

Your client, the National Association of Realtors (hereinafter "NAR"), is an Illinois not-for-profit corporation located and doing business in Chicago, IL. The Kentucky Association of Realtors (KAR) is a constituent state association of Realtors affiliated with the NAR pursuant to Article III, Section 5 of the NAR Constitution, copy of which relevant provision you provided to the Registry while this matter was pending (attached herewith). All KAR members are also members of NAR.

The NAR has established and operates the Realtors Political Action Committee ("RPAC"), a federal political committee registered with the Federal Election Commission. The RPAC solicits and receives contributions from members of the NAR, including members of the KAR, and uses the funds to make contributions to and expenditures in support of candidates for federal office only, including candidates seeking federal office in Kentucky. However, the RPAC never makes (and does not intend to make) contributions to or expenditures in support of candidates for state or local elective office in Kentucky.



Likewise, the KAR has established a Kentucky Realtors Political Action Committee ("KRPAC"). The KRPAC solicits and receives voluntary contributions from individuals who are members of KAR, and uses such funds to make contributions to or expenditures in support of candidates for state or local elective office in Kentucky.

The RPAC seeks to transfer funds to KRPAC and wants to know if contribution limits set forth in KRS 121.150 apply to the funds transferred from RPAC to KRPAC. For these reasons, you request an Advisory Opinion regarding the following issues:

- (1) Are KRPAC and RPAC affiliated committees under KRS 121.150(7) and 32 KAR 2:190(1)(c) and (2)(d); and
- (2) Does the contribution limit set forth in KRS 121.150 apply to RPAC funds transferred to the KRPAC?

KRS 121.015(3)(d) defines "permanent committee" as:

a group of individuals, including an association, committee or organization, other than a campaign committee, political issues committee, inaugural committee, caucus campaign committee, or party executive committee, which is established as, or intended to be, a permanent organization having as a primary purpose expressly advocating the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties, which functions on a regular basis throughout the year.

Given that the KRPAC is an organization whose primary purpose is making contributions to or expenditures in support of candidates for state or local elective office in Kentucky, the KRPAC is a permanent committee under KRS 121.015(3)(d). By contrast, the RPAC is a federally-registered out-of-state permanent committee exempt from registering with the Kentucky Registry of Election Finance under KRS 121.170(1). A federally-registered out-of-state permanent committee such as RPAC may contribute to Kentucky candidates or a slate of candidates without registering as a permanent committee in Kentucky; however, KRS 121.170(5) requires that a federal permanent committee report to the Registry its contributions to Kentucky candidates. The campaign contribution limits for a Kentucky-registered permanent committee also apply to a federally-registered permanent committee. See KRS 121.170(5)(c) and KRS 121.150(6).

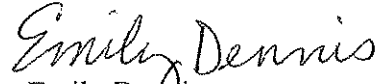
KRS 121.150(7) states that "(p)ermanent committees or contributing organizations affiliated by bylaw structure or by registration, as determined by the Registry of Election Finance, shall be considered as one (1) committee for purposes of applying the contribution limits of subsection (6) of this section." 32 KAR 2:190 lists several factors that the Registry must follow in making this affiliation determination.

For purposes of applying contribution limits, permanent committees shall be considered affiliated committees if they are "established, financed, maintained or controlled by or in common control with . . . a membership organization, other than a political party committee, including a trade or professional association or group." 32 KAR 2:190, Section 1.1(c). In addition, the Registry may examine the relationship between the organizations that sponsor the committees, in this case the National Association of Realtors (NAR) and the Kentucky Association of Realtors (KAR). 32 KAR 2:190 Section 1.2). In this case, the KAR is a constituent state association of Realtors affiliated with the NAR pursuant to Article III, Section 5 of the NAR Constitution. All members of the KAR are also members of the NAR. Given these facts, the RPAC and KRPAC are affiliated committees under KRS 121.150(7) and 32 KAR 2:190. Although Kentucky law does not require the RPAC to register as a permanent committee with the Kentucky Registry of Election Finance, the RPAC and KRPAC are considered as one (1) committee for purposes of applying the contribution limitation found in KRS 121.150(6). See KRS 121.150(7).

KRS 121.150 does not apply to limit the amount of funds that may be transferred between affiliated committees. However, keep in mind that if the RPAC changes its current practice to include the contribution and expenditure of funds to support candidates for state and local office in Kentucky, then the RPAC and KRPAC contributions to any one candidate in an election will be considered in the aggregate for purposes of applying the overall contribution limit, currently \$1,000. See KRS 121.150(6). In addition, the RPAC will be required to submit reports of its contributions to the Registry pursuant to KRS 121.170(5).

This opinion reflects the Registry's consideration of the specific facts set forth in your written request. If you have any questions concerning this advisory opinion, please do not hesitate to contact the Registry.

Very truly yours,

  
Emily Dennis  
General Counsel

Attachment

# **2008 Constitution and Bylaws**

**of the**

**\* NATIONAL ASSOCIATION OF REALTORS®**

Incorporating Amendments and Interpretations  
effective on or before November 16, 2007.

The Constitution and Bylaws were adopted at San Francisco, California, May 31, 1922. Since that adoption they have from time to time been revised; their last revision having been made at the Annual Convention in Las Vegas, Nevada, on November 16, 2007.

\* Formerly National Association of Real Estate Boards. Name change authorized at National Convention, Honolulu, Hawaii, November 15, 1972.

**NATIONAL ASSOCIATION OF REALTORS®**  
430 North Michigan Avenue  
Chicago, Illinois 60611-4087

REALTOR® is a registered collective membership mark which identifies real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

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# 2008 Constitution and Bylaws

of the  
NATIONAL ASSOCIATION OF REALTORS®

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## CONSTITUTION

### ARTICLE I

#### NAME

The name of the organization shall be NATIONAL ASSOCIATION OF REALTORS®.

### ARTICLE II

#### OBJECTS

The objects of the National Association shall be:

**SECTION 1.** To provide a facility for education, research and exchange of information for those engaged in the recognized branches of the real estate business, including brokerage, management, mortgage financing, appraising, counseling, land development and building, and education and research in real estate, in the United States of America, its insular possessions and the Commonwealth of Puerto Rico, for the purpose of raising the standards of real estate practice and preserving the right of property ownership in the interest of the public welfare;

**SECTION 2.** To promote and maintain high standards of conduct in the transaction of the real estate business;

**SECTION 3.** To formulate and promulgate a Code of Ethics for the members of the National Association;

**SECTION 4.** To license its members the right to display the emblem seal of the National Association and the right to use the terms REALTOR®, REALTORS®, or REALTOR-ASSOCIATE® which terms are hereby defined as designating a person or persons engaged in the real estate business who is a Board Member or Individual Member of the NATIONAL ASSOCIATION OF REALTORS®.

**SECTION 5.** To inform the public of the advantages of transacting business with REALTORS®, and to encourage the use by Members of the term REALTOR® and the emblem seal.

## ARTICLE III

### MEMBERSHIP

#### SECTION 1.

(A) The Members of the National Association shall consist of seven classes: (1) Member Boards, (2) Board Members, (3) Individual Members, (4) National Affiliate Members, (5) International Members, (6) Affiliated Institutes, Societies and Councils, and (7) Distinguished Service Award Recipients.

(B) Member Boards shall consist of (1) local real estate boards or associations or Boards or Associations of REALTORS® (hereinafter referred to as local Boards), which shall include city, county, inter-county or inter-state Boards, and also (2) state associations as provided in Section 5 of this Article, all of the REALTOR® Members and REALTOR-ASSOCIATE® Members of which shall hold membership in the National Association through such local board, or state association, as the case may be.

(C) Board Members shall be either REALTOR®, REALTOR-ASSOCIATE® or Institute Affiliate Members in good standing.

1. REALTOR® Members shall be:

(a) principals of real estate firms, or individuals in position of management control on behalf of principals who are not physically present and engaged in the real estate business in connection with the firm's office or individuals employed by or affiliated as independent contractors with REALTOR® principals of real estate firms, and who are deemed qualified for REALTOR® membership by: (a) a local Board within the state in which the real estate firm is located; or (b) a local Board within a state whose border is contiguous with that state; or (c) if the real estate firm is located outside the jurisdiction of any local board, by the state association within whose territory the real estate firm is located having an effective membership agreement with the National Association as provided in Article XV, Section 2. Each sole proprietor, partner or corporate officer of the real estate firm who is actively engaged in the real estate business within the state where applying for membership or within the state in which the real estate firm is located shall be required to become a REALTOR® member if any other principal of such firm, partnership or corporation is a REALTOR® Member with those

states, provided, however, in the case of a real estate firm, partnership or corporation whose business activity is substantially all commercial, each sole proprietor, partner, corporate officer actively engaged in the real estate business in connection with the same office or any other offices within the jurisdiction of the local board in which one of the firm's principals holds REALTOR® membership shall also be required to become a REALTOR®.

(b) corporate officers of a national real estate brokerage franchise organization with at least one hundred fifty (150) franchisees located within the United States, its insular possessions and the Commonwealth of Puerto Rico, the principal broker of not less than one hundred and fifty of which are REALTOR® Members of a Member Board of the National Association. Up to three (3) of the real estate brokerage franchise organization's corporate officers may hold REALTOR® Membership pursuant to this provision of the Constitution, provided however, that at least one of the three must be the Chief Executive Officer or Principal Operating Officer of the real estate brokerage franchise organization.

Each corporate officer making application to hold membership in the National Association pursuant to this provision of the Constitution shall designate for the National Association a local board located within the state in which the corporate officer's principal place of business is located which shall be considered that corporate officer's primary Board and the corporate officer shall pay dues, initiation and processing fees to that local Board in the same manner and in the same amount as are paid to that local Board by all other REALTOR® Members of that local Board. Upon approval of the corporate officer's application for membership by the Board of Directors of the National Association, the National Association shall notify the primary Board identified by the corporate officer of the name and address of the corporate officer to which the local Board shall direct statements for dues, initiation or other processing fees normally assessed to the local Board's REALTOR® Members and such other correspondence or information as the local board sends to its REALTOR® Members. Upon payment of initial dues and any applicable initiation and processing fees, the applicant shall be a member of that local Board, the state association within whose jurisdiction that local Board is located and the National Association.

2. REALTOR-ASSOCIATE® Members shall be those independent contractors and salesmen who are

affiliated with or employed by a REALTOR® Member or a firm, partnership, or corporation of which any REALTOR® Member is a sole proprietor, partner or officer, who are actively engaged in the real estate business and who are deemed qualified for REALTOR-ASSOCIATE® membership by a local board within the state in which the independent contractor or salesman is actively engaged in the real estate business or within a state whose border is contiguous with that state, or if the real estate firm is located outside the jurisdiction of any local board, by the state association within whose territory the independent contractor or salesman is actively engaged in the real estate business having an effective membership agreement with the National Association as provided in Article XV, Section 2.

3. Individuals who are employed by or affiliated as independent contractors with the REALTOR® principals of a real estate firm shall be eligible to be considered for primary membership as REALTORS® or REALTOR-ASSOCIATE®s only in those member boards in which a principal of the real estate firm or an individual in a position of management control on behalf of a principal who is not physically present and engaged in the real estate business in connection with the firm's real estate office holds REALTOR® membership.

4. (a) Institute Affiliate members shall be individuals who hold a professional designation awarded by an Institute, Society or Council affiliated with the NATIONAL ASSOCIATION OF REALTORS® that addresses a specialty area other than residential brokerage or individuals who otherwise hold a class of membership in such Institute, Society or Council that confers the right to hold office. Any such individual, if otherwise eligible, may elect to hold REALTOR® or REALTOR-ASSOCIATE® membership, subject to payment of applicable dues for such membership.

(b) Local boards will establish the rights and privileges to be conferred on Institute Affiliate Members except that no Institute Affiliate Member may be granted the rights to use the term REALTOR®, REALTOR-ASSOCIATE®, or the REALTOR® logo; to serve as President of the local board; or to be a Participant in the local board's multiple listing service.

(c) Institute Affiliate Member dues shall be as established in Article II of the National Association's Bylaws. Member Boards may not establish any additional entrance, initiation fees or dues for Institute Affiliate members, but may provide service

packages to which Institute Affiliate members may voluntarily subscribe.

5. As used herein:

(a) the term "real estate business" shall include real estate brokerage, management, appraising, land development or building.

(b) the term "primary membership" shall refer to an individual's membership in a member board which includes that individual in its calculation of dues paid to the National Association as provided for in Article II, Section 1 of the National Association's Bylaws. The individual shall be a "primary member" of that member board.

(D) Individual Members shall be persons who are elected to membership under the provisions of Section 7 of this Article.

(E) International Members shall be persons who are elected to membership under the provisions of Section 8 of this Article.

(F) Affiliated Institutes, Societies and Councils shall be those formed by the National Association pursuant to Article XIII, Section 1 of this Constitution

(G) In addition, those persons who are currently employed in an executive, administrative or management capacity by a Member Board of the National Association, or by an Institute, Society or Council of the National Association, shall be eligible for Individual Membership without payment of dues and shall be entitled to all rights and privileges of Individual Membership except the right to use the term REALTOR®.

## SECTION 2.

(A) Only one local board in any municipality shall be elected a Member Board of the National Association, except as provided in Sections 3 and 4 of this Article, or otherwise approved by the Board of Directors of the NATIONAL ASSOCIATION OF REALTORS®.

(B) A local board may accept for primary membership individuals whose principal place of business is situated within the territory of the state in which the local board's jurisdiction is located or any state contiguous to that state, provided however, that individuals who are employed by or affiliated as independent contractors with the REALTOR® principals of a real estate firm shall be eligible to be considered for primary membership as

REALTORS® or REALTOR-ASSOCIATE®s only in those local boards in which a principal of the real estate firm or an individual in a position of management control on behalf of a principal who is not physically present and engaged in the real estate business in connection with the firm's real estate office holds REALTOR® membership. A local board may accept for secondary membership any REALTOR® or REALTOR-ASSOCIATE® who holds primary membership in another member board. An individual holding secondary membership in a local board is not required to hold secondary membership in the state association in which the local board holds membership.

**SECTION 3.** If territory is annexed by a municipality in which there is a local board which is a Member Board, such annexation shall not automatically enlarge the jurisdiction of such board if the enlargement would infringe upon the jurisdiction of another such local board; however, the Board of Directors may, in its discretion, provide for the retention or modification of the respective jurisdictions of such boards, in the absence of an agreement between them.

**SECTION 4.** The Board of Directors may, at its discretion, approve the establishment of Commercial Boards of REALTORS®. The rights and responsibilities of the Boards shall be set forth in this Constitution and the Bylaws of the National Association and in accordance with policies approved by the Board of Directors and as amended from time to time.

## SECTION 5.

(A) State Associations having membership agreements with the National Association as provided in Article XV, Section 2, of this Constitution may be elected to membership in the National Association in order to integrate more closely the work of local, state and national bodies, to further the purposes contemplated by said Article, and to afford an opportunity for individuals engaged in the real estate business in areas within the state but outside the jurisdiction of a local board to become members of the National Association, subject to its standards, and to be represented therein.

(B) Such state associations shall be elected to membership only upon the following conditions:

1. Only one state association shall be elected from a given state;



2. Such state association so elected may accept for primary membership individuals whose principal place of business is situated in territory within the state which is not within the jurisdiction of any local board holding membership in both such state association and the National Association and for secondary membership any REALTOR® or REALTOR-ASSOCIATE® who holds primary membership in another state association or a local board whose jurisdiction is located in territory outside of the state;

3. Such state association so electing individuals agrees to be responsible for the enforcement of the Code of Ethics of the National Association with respect to such individuals;

4. Such state association shall have the same right to control the use of the terms REALTOR®, REALTORS®, and REALTOR-ASSOCIATE® in its territory as any local board has within its jurisdiction;

5. Such state association electing individuals to membership agrees to pay dues for them in the same manner as a local board pays dues for its REALTOR® Members and REALTOR-ASSOCIATE® Members.

6. Whenever the term "Member Board" is used in this Constitution and Bylaws, it shall be held to include state associations elected under the terms of this section.

(C) Any state association so elected shall be entitled to one vote as such and to an additional vote for each of its Board Members upon the same basis as local boards for their Board Members under the provisions of Article IX of this Constitution.

**SECTION 6.** All Member Boards must comply with the minimum service criteria established by the Board of Directors.

Any Member Board that fails to satisfy the minimum service criteria may, after due notice and opportunity for hearing, be expelled by the Board of Directors from membership in the National Association.

Each State Association shall enforce the minimum service criteria for local Boards and Associations within the state. Any State Association which fails to enforce the minimum service criteria may, after due notice and opportunity for hearing, be expelled by the Board of Directors from membership in the National Association.

**SECTION 7.** In areas of states where there is no state association having a membership agreement with the National Association, as provided in Section 5 of this Article, and where there is no Member Board, or which areas have not been designated as within the territorial jurisdiction of any Member Board, the Board of Directors may elect any individual engaged in the real estate business as a principal, partner or officer of a corporation as an individual Member. In the case of each application, the nearest Member Board shall be consulted. The rights, privileges and obligations of such Individual Members shall be the same as those of REALTOR® Members, each such Individual Member being a delegate to any meeting of the members of the National Association and entitled to one vote; but in the event of subsequent admission to membership of a local board or state association as a Member Board, such Individual Member shall thereafter be entitled to membership only by virtue of membership in such Member Board.

#### **SECTION 8.**

(A) International Affiliate Organizations shall be associations in the real estate field outside of the United States, its insular possessions, and the commonwealth of Puerto Rico, with which the National Association enters into International Affiliate Agreements that provide for exchange representation and other mutual benefits, and for the adoption and enforcement by the International Affiliate Organization of a Code of Ethics approved by the National Association.

(B) In any country where the National Association has entered into an International Affiliate Agreement with a real estate organization, only those persons engaged in the real estate business in that country who have obtained membership in such Organization shall be eligible for International REALTOR® Membership in the National Association. Such International REALTOR® members may be licensed to use the term REALTOR® and other marks, but may not vote or hold office in the National Association.

(C) Persons engaged in the real estate business in any country where the National Association has not entered into an International Affiliate Agreement with a real estate organization in said country, or persons who are not eligible for membership in an International Affiliate Organization in any country where the National Association has an agreement with such an organization, shall be eligible for

International Subscriber membership in the National Association. Such International Subscriber members may neither be licensed to use the term REALTOR® or other marks, nor vote or hold office in the National Association.

**SECTION 9.** Individuals who have received the Distinguished Service Award shall be life members of the National Association and shall not pay National Convention registration fees.

**SECTION 10.** A REALTOR® Member who has held membership in the National Association as a REALTOR®, REALTOR-ASSOCIATE®, or both, for a cumulative period of forty (40) years, upon certification by the Board of Directors shall be designated "REALTOR® EMERITUS." An individual who has been affiliated with a firm comprised of REALTOR® members for forty (40) years or more, but who was ineligible for REALTOR® or REALTOR-ASSOCIATE® membership for any portion of that time on the basis of sex, national origin, marital status or other basis now prohibited by the Bylaws of the National Association shall be eligible for REALTOR® Emeritus status.

**SECTION 11.** Individuals employed by the national or regional organizational headquarters of a corporation engaged in real estate activities or activities allied with real estate and who may be licensed or unlicensed may be elected to National Affiliate Membership in the National Association, provided the individual does not personally provide real estate services to persons or entities other than the employing company. National Affiliate Members shall have such privileges, duties, and rights of membership, and shall pay such dues as determined by the Board of Directors, but shall not be entitled to vote, hold office or use the terms REALTOR® or REALTOR-ASSOCIATE®. National Affiliate Members shall be entitled to hold membership in the Institutes, Societies and Councils of the National Association, but if they desire to apply for or maintain a designation available through an Institute, Society or Council, they must hold a form of membership in the local board. If membership is not available in the local Board, the individual must hold membership in the State Association. If membership is not available through the State Association, the individual may apply for or maintain a designation from an Institute, Society or Council based on National Affiliate Membership.

**SECTION 12.** REALTOR® Members holding membership pursuant to Section 1(C) 1.(b) of this Constitution shall be Board Members of the local Board designated by them pursuant to that section of the Constitution and of the state association within whose jurisdiction that local Board is located and shall enjoy all of the rights, privileges and obligations, including compliance with the Code of Ethics, of other REALTOR® Members of that state association and local Board except: obligations related to mandatory education, meeting attendance, or indoctrination classes or similar requirements; the right to use the term REALTOR® in connection with their franchise firm's name; and the right to hold elective office in the local Board or state association.

## ARTICLE IV

### BOARD OF DIRECTORS

**SECTION 1.** The government of the National Association shall be vested in a Board of Directors composed of the following ex officio Directors:

(A) The President, President-Elect, First Vice President and Treasurer of the National Association. Any person, having been duly elected as an officer of the National Association, and who, as a consequence thereof, is an ex officio member of the Board of Directors and/or the Executive Committee, shall continue to serve as a member of the Board of Directors and/or the Executive Committee for the balance of the then current elective year in the event the office to which they had been elected is eliminated.

(B) Up to twenty-four (24) members of the Executive Committee who are not already members of the Board of Directors selected by the incoming President provided that such member of the Executive Committee has not resigned a Directorship, the term of which would have coincided in whole or in part with his term appointment to the Board of Directors;

(C) The Presidents of the Institutes, Societies and Councils of the National Association;

(D) The former Presidents of the National Association who continue to be affiliated with their respective local boards and active in the National Association;